Graebel/Eastern Acquisition Movers, LLC *and* Teamsters Union Local No. 115. Case 04–CA–193120

February 14, 2019

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

The General Counsel seeks a default judgment in this case on the ground that the Respondent has failed to file an answer to the complaint and compliance specification. Upon a charge and an amended charge filed by Teamsters Union Local No. 115 (the Union) on February 15 and May 24, 2017, respectively, the General Counsel issued a complaint, compliance specification, and notice of hearing on May 31, 2017 (the complaint and compliance specification), against Graebel/Eastern Acquisition Movers, LLC (the Respondent), alleging that it violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Respondent failed to file an answer.

On June 29, 2017, the General Counsel filed a Motion for Default Judgment with the Board. Thereafter, on July 6, 2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted, and on July 28, 2017, the Board issued a Supplemental Notice to Show Cause. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in a complaint shall be deemed admitted if an answer is not filed within 14 days of service of the complaint, unless good cause is shown. Similarly, Section 102.56 of the Board's Rules and Regulations provides that the allegations in a compliance specification will be taken as true if an answer is not filed within 21 days from service of the compliance specification.

In addition, the complaint and compliance specification affirmatively stated that, unless an answer was filed by June 14, 2017, the Board may find, pursuant to a motion for default judgment, that the allegations in the complaint and compliance specification are true. Further, the undisputed allegations in the General Counsel's Motion for Default Judgment disclose that the Region, by letter dated June 15, 2017, advised the Respondent that unless an answer was filed by June 21, 2017, a motion for default judgment would be filed. Moreover, by letter dated June 21, 2017, the Region further advised that the Respondent would have until June 28, 2017, to file an answer to the complaint and compliance specification, and that absent the filing of an answer by that date, a motion for default judgment would be filed. Nonetheless, despite these notices, the Respondent failed to file an answer.

In the absence of good cause being shown for the failure to file an answer, we deem the allegations in the complaint and compliance specification to be admitted as true, and we grant the General Counsel's Motion for Default Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with a facility in Moorestown, New Jersey (the facility), has been engaged in the business of providing residential and commercial moving and storage services.

During the 12-month period preceding issuance of the complaint and compliance specification, the Respondent, in conducting its business operations described above, purchased and received in the State of New Jersey goods and services valued in excess of $50,000 from other enterprises located within the State of New Jersey, each of which enterprises received these goods directly from points located outside of the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, Dobby Dobson held the position of the Respondent's general manager, and has been a supervisor of the Respondent within the meaning of Section

[1] The attachments to the General Counsel's motion include a letter to the Region dated June 26, 2017, from an attorney for an asset receiver informing the Region that the Respondent had entered into an agreement with its secured lender for the appointment of the asset receiver and the turnover of pledged assets for liquidation and sale. The letter further advised the Region that the receiver had no obligation to participate in litigation and would not do so unless the litigation affected the receivership estate.

It is well established that a respondent's asserted cessation of operations does not excuse it from filing an answer to a complaint or compliance specification. See, e.g., *OK Toilet & Towel Supply, Inc.,* 339 NLRB 1100, 1100–1101 (2003); *Dong-A Daily North America*, 332 NLRB 15, 15–16 (2000). See also *GDT Electrical, Inc.*, 356 NLRB No. 154, slip op. at 1, fn. 2 (2011). Likewise, the Respondent has provided no support for an assertion that the anticipated liquidation of its assets should excuse it from filing an answer.

2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

At all material times, the Respondent's counsel has been an agent of the Respondent within the meaning of Section 2(13) of the Act. The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time, regular part-time, and casual employees engaged in driving, helping, warehousing, and packing work at the Facility, excluding office clerical employees, guards and supervisors as defined by the Act.

Since a date prior to the year 2000, a more precise date being presently unknown to the General Counsel, the Respondent has recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 1, 2014, to April 30, 2017.

At all material times since a date prior to the year 2000, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

About February 15, 2017, the Respondent, by Dobby Dobson, notified the Union by telephone that it intended to close the facility effective May 1, 2017. By letter to Dobby Dobson dated February 15, 2017, the Union requested that the Respondent bargain over the effects of its decision to close the facility.

The subject set forth above relates to the wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. Since February 15, 2017, the Respondent has failed and refused to bargain collectively about the subject set forth above.

About March 13, 2017, the Respondent laid off approximately 15 unit employees, and about May 17, 2017, the Respondent laid off the one remaining unit employee, ceased operations, and closed the facility.

By letters to the Respondent's counsel dated January 26, February 13, March 10 and 13, 2017, and by letter to Dobby Dobson dated February 15, 2017, the Union requested that the Respondent furnish it with the following information:

> Updated seniority list, inclusive of the first name, last name, date of hire/seniority date, classification and current rate of pay for all bargaining unit members currently employed by Respondent.

By letter to Dobby Dobson dated February 15, 2017, and by letter to the Respondent's counsel dated March 10, 2017, the Union requested that the Respondent furnish it with the following information:

> (1) Real estate agreements of sale for the facility located at 923 N. Lenola Road, Moorestown, NJ 08057;
>
> (2) Agreements of sale for assets and equipment;
>
> (3) Notification of lay-off provided to bargaining unit employees;
>
> (4) Outstanding invoices from the Health and Welfare and Pension Funds of Philadelphia and Vicinity; and
>
> (5) Workers' compensation insurance policy agreement with the existing provider.

By letter to the Respondent's counsel dated March 10, 2017, the Union requested that the Respondent furnish it with the "anticipated date of layoff for existing bargaining unit employees."

By letter to the Respondent's counsel dated March 13, 2017, the Union requested that the Respondent furnish it with the following information:

> (1) Proposed, draft, or finalized agreements of sale for existing assets, property or equipment;
>
> (2) Outstanding or unpaid invoices from the Health and Welfare and Pension Funds of Philadelphia and Vicinity; and
>
> (3) A copy of its Workers' compensation insurance policy agreement with the existing provider.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit. Since the dates of request, the Respondent has failed and refused to furnish the Union with the requested information described above.

CONCLUSIONS OF LAW

1. By failing and refusing to bargain over the effects of its decision to close its Moorestown, New Jersey facility, the Respondent has been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, in violation of Section 8(a)(5) and (1) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. By failing and refusing to furnish the Union with requested information that is relevant and necessary to the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(5) and (1) of the

Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union about the effects of its decision to close the facility, we shall order the Respondent to bargain with the Union, on request, about the effects of that decision. As a result of the Respondent's unlawful conduct, however, the unit employees have been denied an opportunity to bargain through their collective-bargaining representative at a time when the Respondent might still have been in need of their services and a measure of balanced bargaining power existed. Meaningful bargaining cannot be assured until some measure of economic strength is restored to the Union. A bargaining order alone, therefore, cannot serve as an adequate remedy for the unfair labor practices committed.

Accordingly, we deem it necessary, in order to ensure that meaningful bargaining occurs and to effectuate the policies of the Act, to accompany our bargaining order with a limited backpay requirement designed both to make whole the unit employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968), as clarified by *Melody Toyota*, 325 NLRB 846 (1998).

Thus, the Respondent shall pay its unit employees backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects on the unit employees of its decision to close its Moorestown, New Jersey facility; (2) a bona fide impasse in bargaining; (3) the Union's failure to request bargaining within 5 business days after receipt of this Decision and Order, or to commence negotiations within 5 business days after receipt of the Respondent's notice of its desire to bargain with the Union; or (4) the Union's subsequent failure to bargain in good faith.

In no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent closed its Moorestown, New Jersey facility to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner. However, in no event shall this sum be less than the unit employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings that the unit employees would normally have received during the applicable period, less any net interim earnings, and shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010), and minus tax withholdings required by State and Federal law.

Appendix A to the complaint and compliance specification sets forth the amount due each employee for the minimum 2-week period. As noted above, we shall grant the General Counsel's request for default judgment and order the Respondent to pay those amounts to the discriminatees, plus any additional backpay that may accrue to the earliest of the conditions set forth in *Transmarine*, plus interest.

In accordance with *King Soopers*, *Inc.*, 364 NLRB No. 93 (2016), enfd. in relevant part 859 F.3d 23 (D.C. Cir. 2017), we shall also order the Respondent to compensate the discriminatees for their search-for-work and interim employment expenses regardless of whether those expenses exceed interim earnings. Search-for-work and interim employment expenses shall be calculated separately from taxable net backpay, with interest at the rate prescribed in *New Horizons*, supra, compounded daily as prescribed in *Kentucky River Medical Center,* supra.

Additionally, we shall order the Respondent to compensate the unit employees for any adverse tax consequences of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 4 allocating the backpay award to the appropriate calendar years for each employee. *AdvoServ of New Jersey, Inc.*, 363 NLRB No. 143 (2016).

Further, having found that the Respondent has violated Section 8(a)(5) and (1) by failing and refusing to furnish the Union with requested necessary and relevant information, we shall order the Respondent to furnish the Union with the information it requested on about January 26, February 15, March 10 and 13, 2017.

Finally, in view of the fact that the Respondent has closed its Moorestown, New Jersey facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known addresses of its former unit

employees to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Graebel/Eastern Acquisition Movers, LLC, Moorestown, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Teamsters Union Local No. 115 (the Union) as the exclusive collective-bargaining representative of the employees in the following bargaining unit by failing and refusing to bargain over the effects of the Respondent's decision to close its Moorestown, New Jersey facility:

> All full-time, regular part-time, and casual employees engaged in driving, helping, warehousing, and packing work at the Facility, excluding office clerical employees, guards and supervisors as defined by the Act.

(b) Refusing to bargain collectively with the Union by failing to furnish the Union with certain requested information that is relevant and necessary to the Union's performance of its functions as the exclusive collective-bargaining representative of the Respondent's unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain collectively and in good faith with the Union concerning the effects of the Respondent's decision to close its Moorestown, New Jersey facility and reduce to writing and sign any agreement reached as a result of such bargaining.

(b) Pay the individuals below the amounts specified following their names, plus interest accrued to the date of payment as set forth in the remedy section of this decision, plus reasonable search-for-work and interim employment expenses, and minus tax withholdings required by State and Federal law:

Unit Employees	Number of Work Hours in Two Week Period	Hourly Wage Rate	Minimum *Transmarine* Remedy Owed
Stanley Borowski, Jr.	80	$22.99	$1,839.20
John Caruso	80	$22.99	$1,839.20
Lamson Clark	80	$23.61	$1,888.80
John Coffee	80	$22.99	$1,839.20
Michael Colgan	80	$21.04	$1,683.20
Michael Conway	80	$22.99	$1,839.20
Jarrod Eichmann	80	$21.04	$1,683.20
John Keubler	80	$22.99	$1,839.20
John King	80	$22.99	$1,839.20
Steven Pisani	80	$22.99	$1,839.20
Raymond Quattlebaum	80	$21.04	$1,683.20
Karl Samuels	80	$21.04	$1,683.20

Chester Shute	80	$22.99	$1,839.20
Allen Small	80	$23.61	$1,888.80
Stephen Vargas	80	$22.99	$1,839.20
Samuel Williams	80	$21.04	$1,683.20
Total			**$28,746.40**

(c) Pay to the unit employees their normal wages for the period set forth in the remedy section of this decision, with interest.

(d) Compensate the unit employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

(e) Furnish the Union with the information it requested on about January 26, February 15, March 10 and 13, 2017.

(f) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(g) Within 14 days after service by the Region, duplicate and mail, at its own expense and after being signed by the Respondent's authorized representative, copies of the attached notice marked "Appendix"[2] to the Union and to the last-known address of all unit employees who were employed by the Respondent at the time that it closed its facility on about May 17, 2017. In addition to the physical mailing of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means.

(h) Within 21 days after service by the Region, file with the Regional Director for Region 4 a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. February 14, 2019

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
Mailed by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to mail and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose a representative to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Teamsters Union Local No. 115 (the Union) as the exclusive collective-bargaining representative of our employees in the following unit by failing to bargain with the Union over the effects of our decision to close our Moorestown, New Jersey facility:

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Mailed by Order of the National Labor Relations Board" shall read "Mailed Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

All full-time, regular part-time, and casual employees engaged in driving, helping, warehousing, and packing work at the Facility, excluding office clerical employees, guards and supervisors as defined by the Act.

WE WILL NOT fail or refuse to furnish the Union with requested information that is relevant and necessary to the performance of its duties as the exclusive collective-bargaining representative of our unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, on request, bargain collectively and in good faith with the Union concerning the effects of our decision to close our Moorestown, New Jersey facility on May 17, 2017, and WE WILL reduce to writing and sign any agreement reached as a result of such bargaining.

WE WILL pay our unit employees the amounts specified in the Decision and Order of the National Labor Relations Board, plus interest accrued to the date of payment, minus tax withholdings required by Federal and State laws, plus reasonable search-for-work and interim employment expenses.

WE WILL pay our unit employees further limited backpay in connection with our failure to bargain over the effects of our decision to close our Moorestown, New Jersey facility, as required by the Decision and Order of the National Labor Relations Board.

WE WILL compensate employees for the adverse tax consequences, if any, of receiving a lump-sum backpay award, and WE WILL file with the Regional Director for Region 4, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years for each employee.

WE WILL furnish the Union with the information it requested on January 26, February 15, March 10, and March 13, 2017.

GRAEBEL/EASTERN ACQUISITION MOVERS, LLC

The Board's decision can be found at www.nlrb.gov/case/04-CA-193120 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.